

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**ANASTACIO CHAVEZ OVALLE,  
SR.,**

**Plaintiff,**

**v.**

**USA TRUCK, INC.,**

**Defendant.**

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§

**Civil Action No. \_\_\_\_\_**

**DEFENDANT USA TRUCK, INC.'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Notice is hereby given that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant USA Truck, Inc. ("USA Truck") hereby removes this action from the 162<sup>nd</sup> Judicial District Court of Dallas County, to the United States District Court for the Northern District of Texas, Dallas Division, and would respectfully show as follows:

**I. PARTIES**

1. Plaintiff Anastacio Chavez Ovalle, Sr. ("Plaintiff") resides in Ellis County, Texas. For the purposes of diversity, Plaintiff is a citizen of Texas.

2. Defendant, USA Truck is a corporation, having been incorporated in the state of Delaware, with its principal place of business in Van Buren, Arkansas. For the purposes of diversity of citizenship, USA Truck is a citizen of Delaware and Arkansas, and is not a citizen of Texas.

**II. THE STATE COURT ACTION**

3. On August 7, 2017, Plaintiff Anastacio Chavez Ovalle ("Plaintiff") filed his Original Petition, Request for Disclosure, and Rule 193.7 Notice ("Original Petition") in

the 162<sup>nd</sup> Judicial District Court of Dallas County, in an action styled *Anastacio Chavez Ovalle, Sr., v. USA Truck, Inc.*, Case No. DC-17-09570 (the "State Court Action"). Defendant was served with process on October 4, 2017. Defendant subsequently filed its Original Answer on October 26, 2017 ("Defendant's Original Answer").

4. Plaintiff's claims arise from a motor vehicle accident on November 3, 2016 between Plaintiff and USA Truck's driver. In his Original Petition, Plaintiff alleges that the basis of the lawsuit resulted from the improper conduct of USA Truck's driver and that his actions constitute negligence and/or negligence *per se*. Plaintiff contends that it was the negligence of Defendant's driver that was a proximate cause of Plaintiff's injuries and damages.

5. Plaintiff further alleges Defendant USA Truck is liable for Plaintiff's injuries and damages under both the theory of respondeat superior as well as negligence.

6. With this Notice of Removal, USA Truck removes the State Court Action to this Court on the basis of diversity jurisdiction, as more fully described herein.

### **III. BASIS FOR REMOVAL**

7. The State Court Action is removable pursuant to 28 U.S.C §§ 1441(a)-(b) and 28 U.S.C. 1332(a)(1). This lawsuit is a civil dispute between citizens of different states. There is, and was at all relevant times (including the time of filing the State Court Action, service of the Petition, and the filing of this Notice of Removal), complete diversity of citizenship between parties.

8. The amount in controversy in this lawsuit exceeds \$75,000, exclusive of interest and costs, as evidenced by Section II. of Plaintiff's Original Petition, included at Exhibit D-1 attached hereto and incorporated herein by reference. In his Petition,

Plaintiff seeks to recover monetary relief over \$200,000.00 but no more than \$1,000,000.00.

9. Because Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds the \$75,000 requirement, this Court has original jurisdiction and removal is proper.

#### **IV. VENUE**

10. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the district and division of this Court embrace Dallas County, Texas, the place where Plaintiff filed its State Court Action, and under U.S.C. § 1391(b)(2) because a substantial part of the alleged events or omissions giving right to Plaintiff's claims occurred in Dallas County, Texas.

#### **V. COMPLIANCE WITH REMOVAL REQUIREMENTS**

11. This Notice of Removal is timely filed under 28 U.S.C. §§ 1446(a)-(b). This Notice of Removal is filed within thirty days of October 4, 2017, the date USA Truck was first served with process and a copy of Plaintiff's Original Petition in the State Court Action, the initial pleading setting forth the claim for relief upon which this action is based. This Notice of Removal is also filed within one year of the filing of the Petition on August 7, 2017.

12. Plaintiff filed his Original Petition in the 162<sup>nd</sup> Judicial District Court of Dallas County, Case No. DC-17-09570. In accordance with 28 U.S.C. §§1446(d), written notice of this Notice of Removal will be promptly given to Plaintiff, through its counsel of record, and a copy of this Notice of Removal will be filed with the clerk of the

162<sup>nd</sup> Judicial District Court of Dallas County, Texas, where the State Court Action is pending.

13. Pursuant to Northern District Local Rule 81.1 and 28 U.S.C. 1446(a), the following items are filed simultaneously herewith and incorporated herein by reference:

- Exhibit A: a completed civil cover sheet;
- Exhibit B: a supplemental civil cover sheet;
- Exhibit C: a certified copy of the state court docket sheet;
- Exhibit D: an index of documents filed in state court;
- Exhibit D-1 through D-4: each document filed in the State Court Action, including all process, pleadings, and orders, but excluding any discovery material;
- Exhibit E: USA Truck's Certificate of Interested Persons

14. By filing this Notice of Removal, USA Truck does not intend to waive any defenses it may have to Plaintiff's claims.

## **VI. CONCLUSION**

WHEREFORE, Defendant USA Truck, Inc. of Delaware and Arkansas requests that this Court accept jurisdiction over this lawsuit for the reasons set forth above, and grant it such other and further relief, both at law and in equity, to which it may be justly entitled.

Respectfully submitted,

/s/Mark S. Scudder

**MARK S. SCUDDER**

State Bar No. 17936300

**AMANDA COSTELLO**

State Bar No. 24086607

STRASBURGER & PRICE, LLP

901 MAIN STREET, SUITE 6000

DALLAS, TX 75202-3794

(214) 651-4300

(214) 651-4330 Fax

[mark.scudder@strasburger.com](mailto:mark.scudder@strasburger.com)

[amanda.costello@strasburger.com](mailto:amanda.costello@strasburger.com)

ATTORNEYS FOR DEFENDANT  
USA TRUCK, INC.

**CERTIFICATE OF SERVICE**

This is to certify that on November 3, 2017, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "notice of Electronic Filing" to the following attorneys of record:

Langdon "Trey" Smith  
Frank W. Robertson  
Jim S. Adler & Associates  
1900 West Loop South, 20<sup>th</sup> Floor  
Houston, Texas 77027

/s/Mark S. Scudder

**MARK S. SCUDDER**

# **EXHIBIT A**

## CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Anastacio Chavez Ovalle, Sr.

**DEFENDANTS**

USA Truck, Inc.

(b) County of Residence of First Listed Plaintiff Ellis  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Crawford  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Langdon "Trey" Smith and Frank W. Robertson, Jim S. Adler & Associates, 3d/International Tower, 1900 West Loop South, 20th Floor, Houston, Texas 77027, 713-735-2114

Attorneys (If Known)  
Mark S. Scudder and Amanda Costello, Strasburger & Price, LLP, 901 Main Street, Suite 6000, Dallas, Texas 75002, 214-651-4300

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                                       |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332; 28 U.S.C. 1441

Brief description of cause:

Plaintiff asserting negligence in an action based on a motor vehicle accident.

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) PENDING OR CLOSED:**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/03/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/Mark S. Scudder

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

# **EXHIBIT B**



United States District Court  
Northern District of Texas

Supplemental Civil Cover Sheet  
For Cases Removed From State Court

This form must be attached to the Civil Cover Sheet at the time the case is filed in the U.S. District Clerk's Office. Additional sheets may be used as necessary.

1. State Court Information:

Please identify the court from which the case is being removed and specify the number assigned to the case in that court.

Court

Case Number

162<sup>nd</sup> Judicial District Court, Dallas County,  
Texas

DC-17-09570

2. Style of the Case:

Please include all Plaintiff(s), Defendant(s), Intervenor(s), Counterclaimant(s), Crossclaimant(s) and Third Party Claimant(s) still remaining in the case and indicate their party type. Also, please list the attorney(s) of record for each party named and include their bar number, firm name, correct mailing address, and phone number (including area code).

Party and Party Type

Attorney(s)

Anastacio Chavez Ovalle, Sr. - Plaintiff

Langdon "Trey" Smith  
State Bar No. 00797456  
Frank W. Robertson  
State Bar No. 24033129  
Jim S. Adler & Associates  
1900 West Loop South, 20<sup>th</sup> Floor  
Houston, Texas 77027  
(713) 777-4000

USA Truck, Inc. - Defendant

Mark S. Scudder  
State Bar No. 17936300  
Amanda Costello  
State Bar No. 24086607  
Strasburger & Price, LLP  
901 Main Street, Suite 6000  
Dallas, Texas 75202-3794  
(214) 651-4300

**3. Jury Demand:**

Was a Jury Demand made in State Court? Yes X No \_\_\_\_

If "Yes," by which party and on what date?

Anastacio Chavez Ovalle, Sr. - Plaintiff August 7, 2017  
Party Date

**4. Answer:**

Was an Answer made in State Court? Yes X No \_\_\_\_

If "yes," by which party and on what date?

USA Truck, Inc. – Defendant October 26, 2017  
Party Date

**5. Unserved Parties:**

The following parties have not been served at the time this case was removed:

<u>Party</u>	<u>Reason Not Served</u>
--------------	--------------------------

N/A	N/A
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**6. Nonsuited, Dismissed or Terminated Parties:**

Please indicate changes from the style of the papers from another jurisdiction and the reason for the change:

<u>Party</u>	<u>Reason for Change</u>
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N/A	N/A
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**7. Claims of the Parties:**

The filing party submits the following summary of the remaining claims of each party in this litigation:

<u>Party</u>	<u>Claim(s)</u>
Anastacio Chavez Ovalle, Sr.	Plaintiff's claims arise from an automobile incident which occurred on November 3, 2016. As a result of the incident, Plaintiff brought claims of negligence and negligence per se against Defendant. Plaintiff is seeking monetary relief over \$200,000.00 but no more than \$1000,000.00.

# **EXHIBIT C**

**DOCKET SHEET****CASE NO. DC-17-09570****ANASTACIO CHAVEZ OVALLE, Sr.**  
**vs.**  
**USA TRUCKING**§  
§  
§  
§  
§Location: **162nd District Court**  
Judicial Officer: **MOORE, MARICELA**  
Filed on: **08/07/2017****CASE INFORMATION**Case Type: **MOTOR VEHICLE  
ACCIDENT****PARTY INFORMATION****PLAINTIFF**      **OVALLE, ANASTACIO CHAVEZ, Sr.***Lead Attorneys*  
**SMITH, LANGDON**  
*Retained*  
713-735-2114(W)**DEFENDANT**      **USA TRUCKING****COSTELLO, AMANDA**  
*Retained*  
214-651-2158(W)

DATE	EVENTS & ORDERS OF THE COURT	INDEX
08/07/2017	NEW CASE FILED (OCA) - CIVIL	
08/07/2017	 ORIGINAL PETITION	
08/07/2017	 ISSUE CITATION	
08/07/2017	 JURY DEMAND Party: PLAINTIFF OVALLE, ANASTACIO CHAVEZ, Sr.	
08/10/2017	<b>CITATION</b>  USA TRUCKING Served: 10/04/2017 ATTY/DB (MAILED 9/25/17)	
10/17/2017	 RETURN OF SERVICE USA TRUCKING	
10/26/2017	 ORIGINAL ANSWER - GENERAL DENIAL Party: DEFENDANT USA TRUCKING	

**DATE****FINANCIAL INFORMATION**

	<b>PLAINTIFF OVALLE, ANASTACIO CHAVEZ, Sr.</b>		
	Total Charges		342.00
	Total Payments and Credits		342.00
	<b>Balance Due as of 11/1/2017</b>		<b>0.00</b>
08/08/2017	Charge	PLAINTIFF OVALLE, ANASTACIO CHAVEZ, Sr.	342.00
08/08/2017	CREDIT CARD - Receipt # 49944-2017-DCLK TEXFILE (DC)	PLAINTIFF OVALLE, ANASTACIO CHAVEZ, Sr.	(342.00)

STATE OF TEXAS }  
COUNTY OF DALLAS }

I, FELICIA PITRE, Clerk of the District of Dallas County, Texas, do hereby certify that I have compared this instrument to be a true and correct copy of the original as appears on record in my office.

GIVEN UNDER MY HAND AND SEAL of said Court, at office in Dallas, Texas, this 01 day of November A.D., 2017.

FELICIA PITRE, DISTRICT CLERK  
DALLAS COUNTY, TEXAS

By Jacqueline Canales ~~DEPUTY~~

# **EXHIBIT D**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**ANASTACIO CHAVEZ OVALLE,  
SR.,**

**Plaintiff,**

**v.**

**USA TRUCK, INC.,**

**Defendants.**

§  
§  
§  
§  
§  
§  
§  
§

**Case No. \_\_\_\_\_**

**INDEX OF DOCUMENTS FILED IN STATE COURT**

<b><u>Exhibit</u></b>	<b><u>Document</u></b>	<b><u>Date Filed in State Court</u></b>
D-1	Plaintiff's Original Petition, Jury Demand, Request for Disclosure And Rule 193.7 Notice	08/07/2017
D-2	Issue Citation	08/07/2017
D-3	Return of Service	10/17/2017
D-4	Original Answer	10/26/2017

# **EXHIBIT D-1**



FILED  
DALLAS COUNTY  
8/7/2017 2:51 PM  
FELICIA PITRE  
DISTRICT CLERK

1 CT-ATTY

Freeney Anita

CAUSE NO. DC-17-09570

ANASTACIO CHAVEZ OVALLE, SR.	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
VS.	§	
	§	DALLAS COUNTY, TEXAS
USA TRUCKING	§	
	§	
<i>Defendants.</i>	§	_____ JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION, JURY DEMAND,  
REQUEST FOR DISCLOSURE, AND RULE 193.7 NOTICE**

COMES NOW ANASTACIO CHAVEZ OVALLE, SR. ("Plaintiff") complaining of Defendant USA TRUCKING, ("Defendant USA TRUCKING"), and in support thereof shows the Court as follows:

**I. DISCOVERY CONTROL PLAN**

1.1 Pursuant to Texas Rule of Civil Procedure 190.3 the discovery of this case is to be conducted under Level 2 Discovery Control Plan.

**II. CLAIM FOR RELIEF**

2.1 Plaintiff seeks monetary relief over \$200,000.00 but no more than \$1,000,000.00.

**III. PARTIES**

3.1 Plaintiff, ANASTACIO CHAVEZ OVALLE, SR., is a resident of Ferris, Texas.

3.2 Defendant USA TRUCKING, is a corporation doing business in the State of Texas and pursuant to Article 2.11 of the Texas Business Corporation Act, and Texas Rules of Civil Procedure 106(a)(1), may be served with process by delivering in person or mailing by registered or certified mail, return receipt requested, a true copy of the citation and petition to its

registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

#### **IV. JURISDICTION AND VENUE**

4.1 The Court has jurisdiction over this cause because Plaintiff's damages are within the jurisdictional limits of the Court.

4.2 Pursuant to Sections 15.001 et seq. of the Texas Civil Practice and Remedies Code, this venue is proper because the incident occurred in Dallas County, Texas.

4.3 Plaintiff has satisfied all conditions precedent to bringing this lawsuit.

4.4 Plaintiff did nothing to cause or contribute to this occurrence.

#### **V. FACTS**

5.1 On or about November 3, 2016, Plaintiff, ANASTACIO CHAVEZ OVALLE, SR., was operating a 2011 Chevrolet van. Plaintiff and Defendant's driver were traveling southbound on I-75, in Dallas County, Texas. Defendant's driver was traveling directly behind Plaintiff when Defendant's driver failed to control the speed of his vehicle and struck the back of Plaintiff's vehicle. As a result, Plaintiff suffered severe injuries which required medical treatment.

#### **VI. NEGLIGENCE OF DEFENDANT'S DRIVER**

6.1 The incident made the basis of this lawsuit resulted from the improper conduct of Defendant's driver. His conduct constitutes negligence and/or negligence *per se* as those terms are understood in law, and such negligent conduct was a proximate cause of the occurrence, injuries, and damages made the basis of this suit.

6.2 Defendant's driver had a duty to exercise ordinary care and to operate his vehicle in a reasonable and prudent manner. Defendant's driver breached his duty of care. His negligent

actions and/or omissions include, but are not limited to, one or more of the following non-exclusive particulars:

- a. failing to keep a proper lookout;
- b. failing to yield the right-of-way to other motorists;
- c. failing to apply the brakes properly and/or timely;
- d. failing to take proper evasive action;
- e. failing to control his speed;
- f. failing to pay attention;
- g. failing to operate his vehicle as a person of ordinary prudence would have in the same or similar circumstance; and/or
- h. other acts of negligence.

One, some, or all of the foregoing acts and/or omissions or others on the part of Defendant's driver constituted negligence and negligence *per se*. Such negligence was a proximate cause of Plaintiff's injuries and damages.

#### **VII. RESPONDEAT SUPERIOR**

7.1 The collision made the basis of this lawsuit resulted from the negligent conduct of Defendant's driver. Defendant USA TRUCKING was the owner of the truck. At all times material to this lawsuit, Defendant's driver was an employee of Defendant USA TRUCKING and was acting within the course and scope of his employment. Consequently, Defendant USA TRUCKING is vicariously liable to Plaintiff for the negligent conduct of Defendant's driver under the theory of *respondeat superior*.

### **VIII. NEGLIGENCE OF USA TRUCKING**

8.1 The conduct of Defendant USA TRUCKING constitutes negligence and negligence *per se* as that term is known in the law. Such negligent acts or omission include, but are not limited to, the following:

- a. allowing Defendant's driver to operate its truck even though it knew or should have known he was a reckless or incompetent driver;
- b. entrusting a vehicle to Defendant's driver even though it knew or should have known he was a reckless or incompetent driver;
- c. failing to ensure that its vehicle would be driven properly;
- d. failing to properly train Defendant's driver in the safe operation of a motor vehicle;
- e. failing to properly supervise Defendant's driver with his driving activities;
- f. failing to properly maintain the vehicle in a safe operational condition;
- g. failing to maintain the vehicle to the minimal standard of safety;
- h. failing to establish and enforce safety rules and regulations;
- i. failing to properly educate, instruct and supervise in the performance of his duties;
- j. failing to adequately train, educate, or provide instructions and orders to persons;
- k. failing to provide proper safety manuals and instructions to employees responsible for safety;
- l. failing to properly secure and track its equipment;
- m. failing to enforce and ensure compliance of established safety and operational rules and regulations for persons operating its equipment; and/or
- n. other acts of negligence and negligence *per se*.

One, some, or all of the foregoing acts and/or omissions or others on the part of Defendants constituted negligence and negligence *per se*. Such negligence was a proximate cause of

Plaintiff's injuries and damages.

#### **IX. DAMAGES**

9.1 As a result of the incident made the basis of this lawsuit as described in the preceding paragraphs and the negligence of Defendant, Plaintiff sustained significant injuries and damages in the past and will in reasonable probability sustain additional damages in the future.

9.2 Consequently, Plaintiff respectfully requests that the trier of fact determine the amount of damages and losses that they have incurred in the past and that they will reasonably incur in the future, as well as the monetary value of these damages, which include, but are not limited to, the following:

- a. past, present, and future physical pain and mental anguish;
- b. past, present, and future loss of earning capacity;
- c. past, present, and future disfigurement;
- d. past, present, and future physical impairment;
- e. past, present, and future medical care and related expenses; and
- f. past, present, and future out-of-pocket economic losses.

9.3 Because of all of the above and foregoing, Plaintiff has suffered actual damages in excess of the minimum jurisdictional limits of the Court for which damages Plaintiff now brings suit.

9.4 Plaintiff seeks both prejudgment and post-judgment interest as allowed by law, all costs of Court, and all other relief, both general and special, at law and in equity, to which he may be justly entitled.

#### **X. PRESERVATION OF EVIDENCE**

10.1 Plaintiff hereby request and demand that Defendant preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit,

or the damages resulting therefrom, including photographs, videotapes, audiotapes, recordings, business or medical records; bills; estimates; invoices; checks; measurements; correspondence; memoranda; files; any item which has been removed from the premises which was involved in the incident; facsimile; email; voicemail; text messages; investigation; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiff in the referenced incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

#### **XI. JURY DEMAND**

11.1 Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Plaintiff respectfully requests and demands a trial by jury. The appropriate jury fee is tendered with the filing of this pleading.

#### **XII. REQUEST FOR DISCLOSURE**

12.1 Pursuant to Texas Rule of Civil Procedure 194, Plaintiff hereby requests that Defendant disclose the information or material described in Texas Rule of Civil Procedure 194.2 (a)-(l). Defendant must serve unto Plaintiff written responses to these requests for disclosure on or before fifty (50) days after the service of these requests. Failure to timely respond will constitute an abuse of the discovery process as described in Texas Rule of Civil Procedure 215.

#### **XIII. RULE 193.7 NOTICE**

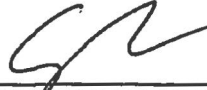
13.1 Pursuant to Texas Rule of Civil Procedure 193.7, Plaintiff hereby gives actual notice to Defendant that any and all documents produced may be used against Defendant at any pretrial proceeding and/or at the trial of this matter without the necessity of authenticating the documents.

**CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited in terms of law to appear and answer herein, and that upon final trial and hearing hereof, Plaintiff recover against Defendant damages in accordance with the evidence, costs of Court herein expended, interest to which Plaintiff is justly entitled under the law, and any and all further relief, both general and special, at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

**JIM S. ADLER & ASSOCIATES**



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**LANGDON "TREY" SMITH**

State Bar No. 00797456

[lsmith@jimadler.com](mailto:lsmith@jimadler.com)

**FRANK W. ROBERTSON**

State Bar No. 24033129

[frobertson@jimadler.com](mailto:frobertson@jimadler.com)

3D/INTERNATIONAL TOWER

1900 West Loop South, 20<sup>th</sup> Floor

Houston, Texas 77027

(713) 735-2114 (Telephone)

(713) 781-2514 (Facsimile)

**ATTORNEYS FOR PLAINTIFF**

# **EXHIBIT D-2**





**Service of Process  
Transmittal**

10/04/2017

CT Log Number 532049352

**TO:** Gerald Noblin  
USA Truck, Inc.  
3200 Industrial Park Rd  
Van Buren, AR 72956-6110

**RE: Process Served in Texas**

**FOR:** USA Truck, Inc. (Domestic State: DE)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** ANASTACIO CHAVEZ OVALLE, SR., Pltf. vs. USA TRUCKING, Dft.  
*Name discrepancy noted.*

**DOCUMENT(S) SERVED:** Citation, Return, Petition

**COURT/AGENCY:** 162nd Judicial District Court Dallas County, TX  
Case # DC1709570

**NATURE OF ACTION:** Personal Injury - Vehicle Collision - 11/03/2016

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Dallas, TX

**DATE AND HOUR OF SERVICE:** By Process Server on 10/04/2017 at 12:10

**JURISDICTION SERVED :** Texas

**APPEARANCE OR ANSWER DUE:** By 10:00 a.m. on the Monday next after the expiration of 20 days after you were served

**ATTORNEY(S) / SENDER(S):** Langdon "Trey" Smith  
JIM S. ADLER & ASSOCIATES  
1900 West Loop South, 20th Floor  
Houston, TX 77027  
713-735-2114

**ACTION ITEMS:** SOP Papers with Transmittal, via UPS Next Day Air , 1Z0399EX0135834580  
  
Image SOP  
  
Email Notification, April Sexton april.sexton@usa-truck.com  
  
Email Notification, Gerald Noblin gerald.noblin@usa-truck.com

**SIGNED:** C T Corporation System  
**ADDRESS:** 1999 Bryan Street  
Suite 900  
Dallas, TX 75201  
**TELEPHONE:** 214-932-3601

# **EXHIBIT D-3**

**RETURN OF SERVICE**

**State of Texas**

**County of Dallas**

**162nd Judicial District Court**

Case Number: DC-17-09570

Plaintiff:

**Anastacio Chavez Ovalle, Sr.**

vs.

Defendant:

**USA Trucking**

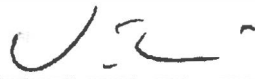
Received these papers on the 3rd day of October, 2017 at 1:25 pm to be delivered to **USA Trucking C/O C.T. Corporation System; Registered Agent at:**

**1999 Bryan Street, Suite 900, Dallas, Dallas County, TX 75201.**

I, Vince Carroccia, do hereby affirm that on the **4th day of October, 2017 at 12:10 pm, I:**

Delivered to the within named Corporation a true copy of the Citation with Plaintiff's Original Petition, Jury Demand, Request for Disclosure and Rule 193.7 Notice with the date of delivery endorsed thereon by me, to C.T. Corporation System as Registered Agent and personally delivered to their designated agent for acceptance of delivery of process Terri Thongsavat and informing said person of the contents thereof.

"My name is Vince Carroccia. My date of birth is 01/XX/1962. My address is 1720 Winding Creek Lane, Rockwall, Texas 75032, USA. I declare under the penalty of perjury that the foregoing is true and correct. Executed in Dallas County, State of Texas, on the 9TH day of October, 2017."



**Vince Carroccia**  
PSC305, EXP. 11/30/2019

Our Job Serial Number: PEL-2017002788

FILE  
DALLAS COUNTY  
10/17/2017 4:07 PM  
FELICIA PITRE  
DISTRICT CLERK  
Nikita Mosley

**FORM NO. 353-3 - CITATION  
THE STATE OF TEXAS**

**To:**  
**USA TRUCKING**  
**BY SERVING ITS REGISTERED AGENT CT CORPORATION SYSTEM**  
**1999 BRYAN STREET SUITE 900**  
**DALLAS TX 75201-3136**

**GREETINGS:**

You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10 o'clock a.m. of the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you. Your answer should be addressed to the clerk of the 162nd District Court at 600 Commerce Street, Ste. 101, Dallas, Texas 75202.

Said Plaintiff being **ANASTACIO CHAVEZ OVALLE, Sr.**

Filed in said Court 7th day of August, 2017 against

**USA TRUCKING**

For Suit, said suit being numbered DC-17-09570, the nature of which demand is as follows:  
Suit on **MOTOR VEHICLE ACCIDENT** etc. as shown on said petition **REQUEST FOR DISCLOSURE**, a copy of which accompanies this citation. If this citation is not served, it shall be returned unexecuted.

WITNESS: FELICIA PITRE, Clerk of the District Courts of Dallas, County Texas.  
Given under my hand and the Seal of said Court at office this 10th day of August, 2017.

ATTEST: FELICIA PITRE, Clerk of the District Courts of Dallas, County, Texas

By , Deputy  
DENOSHA BOSTON



<b>ATTY</b>
<b>CITATION</b>
<b>DC-17-09570</b>
<b>ANASTACIO CHAVEZ OVALLE, Sr.</b> <b>vs.</b> <b>USA TRUCKING</b>
<b>ISSUED THIS</b> <b>10th day of August, 2017</b>
<b>FELICIA PITRE</b> Clerk District Courts, Dallas County, Texas
<b>By: DENOSHA BOSTON, Deputy</b>
<b>Attorney for Plaintiff</b> <b>LANGDON SMITH</b> 1900 WEST LOOP SOUTH 20TH FLOOR HOUSTON TX 77027 713-735-2114

**DALLAS COUNTY CONSTABLE**  
**FES**  
**PAID** **FES NOT**  
**PAID**

### OFFICER'S RETURN

Case No. : DC-17-09570

Court No. 162nd District Court

Style: ANASTACIO CHAVEZ OVALLE, Sr.

vs.

USA TRUCKING

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ o'clock \_\_\_\_\_ M. Executed at \_\_\_\_\_,  
within the County of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M. on the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by delivering to the within named \_\_\_\_\_

each, in person, a true copy of this Citation together with the accompanying copy of this pleading, having first endorsed on same date of delivery. The distance actually traveled by  
me in serving such process was \_\_\_\_\_ miles and my fees are as follows: To certify which witness my hand.

For serving Citation	\$ _____	_____
For mileage	\$ _____	of _____ County, _____
For Notary	\$ _____	By _____ Deputy

(Must be verified if served outside the State of Texas.)

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

to certify which witness my hand and seal of office.

Notary Public \_\_\_\_\_ County \_\_\_\_\_

# **EXHIBIT D-4**

**CAUSE NO. DC-17-09570**

<b>ANASTACIO CHAVEZ OVALLE, SR.</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff,</b>	<b>§</b>	
	<b>§</b>	
<b>v.</b>	<b>§</b>	
	<b>§</b>	
<b>USA TRUCKING</b>	<b>§</b>	<b>162<sup>ND</sup> JUDICIAL DISTRICT</b>
	<b>§</b>	
	<b>§</b>	
<b>Defendant.</b>	<b>§</b>	<b>OF DALLAS COUNTY, TEXAS</b>

**DEFENDANT USA TRUCK INC.'S ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendant USA Truck, Inc. ("Defendant"), incorrectly sued as USA TRUCKING, in response to the Original Petition of Plaintiff Anastacio Chavez Ovalle, Sr. ("Plaintiff") on file herein, files its Answer, and would respectfully show the Court as follows:

**I.**

**GENERAL DENIAL**

1. Subject to such stipulations and admissions as may be made hereafter, Defendant hereby enters a general denial as is permitted by Rule 92 of the Texas Rules of Civil Procedure, and requests that Plaintiff be required to prove by a preponderance of the evidence the charges and allegations which he has made against Defendant.

**II.**

**AFFIRMATIVE DEFENSES**

2. Pleading further, alternatively, and by way of affirmative defense, the incident in question and Plaintiff's alleged resulting damages, if any, were the result of

negligent and negligent per se, acts and/or omissions of others not under the control of Defendant, including Plaintiff, whose acts or omissions were, alternatively, a proximate cause, or a contributing proximate cause, or the sole proximate cause of the incident in question and any alleged damages resulting therefrom. Defendant, therefore, invokes the doctrine of comparative causation and proportionate responsibility as set forth in Chapter 33 of the Texas Civil Practice or Remedies Code.

3. Further answering, alternatively, and by way of affirmative defense, in the unlikely event that any liability be found on the part of Defendant, such liability be reduced by the percentage of causation and responsibility found to have resulted from the negligence and negligence per se of others, including Plaintiff.

4. Further answering, alternatively, and by way of affirmative defense, Plaintiff's medical expenses should be limited to those actually paid or incurred on behalf of Plaintiff pursuant to Texas Civil Practice & Remedies Code § 41.0105.

WHEREFORE, PREMISES CONSIDERED, Defendant USA Truck, Inc. requests that Plaintiff take nothing by his suit, that Defendant recovers its costs in its behalf expended, and for such other and further relief to which Defendant may be justly entitled.



Respectfully submitted,

/s/Amanda Costello

**MARK S. SCUDDER**

State Bar No. 17936300

**AMANDA COSTELLO**

State Bar No. 24086607

STRASBURGER & PRICE, LLP

901 MAIN STREET, SUITE 6000

DALLAS, TX 75202-3794

(214) 651-4300

(214) 651-4330 Fax

[mark.scudder@strasburger.com](mailto:mark.scudder@strasburger.com)

[amanda.costello@strasburger.com](mailto:amanda.costello@strasburger.com)

ATTORNEYS FOR DEFENDANT USA  
TRUCK, INC.

**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that on the 26<sup>th</sup> day of October 2017 the foregoing was electronically filed in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure.

/s/Amanda Costello

AMANDA COSTELLO

# **EXHIBIT E**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**ANASTACIO CHAVEZ OVALLE,  
SR.,**

**Plaintiff,**

**v.**

**USA TRUCK, INC.,**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No.**

**DEFENDANT USA TRUCK, INC.'S  
CERTIFICATE OF INTERESTED PERSONS**

Pursuant to Federal Rule of Civil Procedure 7.1(a) and Local Rules 3.1(c) and 81.1(a)(4)(D), Defendant USA Truck, Inc. files this Certificate of Interested Persons. Defendant reserves the right to supplement this certification if necessary. The undersigned counsel certifies that the following persons, associations of persons, firms, partnerships, corporations, guarantors, insurers, affiliates, parent or subsidiary corporations, and other legal entities have or may have a financial interest in the outcome of this case:

1. Plaintiff Anastacio Chavez Ovalle, Sr., is an individual seeking monetary relief.
2. Defendant USA Truck, Inc., is a public company.
3. Mark Scudder and Amanda Costello, Strasburger & Price LLP, counsel for  
Defendant
4. Langdon "Trey" Smith and Frank W. Robertson, Jim S. Adler & Associates,  
counsel for Plaintiff

Respectfully submitted,

/s/Mark S. Scudder

**AMANDA COSTELLO**

State Bar No. 24086607

amanda.costello@strasburger.com

**MARK S. SCUDDER**

State Bar No. 17936300

mark.scudder@strasburger.com

**STRASBURGER & PRICE, LLP**

901 Main Street, Suite 6000

Dallas, Texas 75202

(214) 651-4300 (Telephone)

(214) 651-4330 (Facsimile)

**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

This is to certify that on November 3, 2017, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a "notice of Electronic Filing" to the following attorneys of record:

Langdon "Trey" Smith  
Frank W. Robertson  
Jim S. Adler & Associates  
1900 West Loop South, 20<sup>th</sup> Floor  
Houston, Texas 77027

/s/Mark S. Scudder

**MARK S. SCUDDER**